

**(2012) 05 KL CK 0012**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 27396 of 2001**

Chakiat Agencies (P) Ltd.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

**Date of Decision :** 21-05-2012

**Acts Referred:**

Constitution of India, 1950 — Article 112

Kerala Motor Vehicles Taxation Act, 1976 — Section 2, 2(18), 2(22), 2(28), 2(32)

**Citation :** (2012) 3 ILR (Ker) 247 : (2012) 3 KLJ 84

**Hon'ble Judges :** P.R. Ramachandra Menon, J

**Bench :** Single Bench

**Advocate :** M. Pathrose Matthai, Sri B.S. Krishnan, Sri S. Venkiteswaran, Sri K.P. Sreekumar, Sri K. Anand and Smt. Latha Krishnan, for the Appellant; Sebastian Champappilly, Special Government Pleader, Sri E.K. Nandakumar and Sri A.K. Jayasankar Nambiar, for the Respondent

**Final Decision :** Dismissed

## Judgement

Mr. Justice P.R. Ramachandra Menon

1. Whether the dictum in M/s Chakiat Agencies Pvt. Ltd. v. State of Kerala 2001 (2) KLT 840 as to the liability of the petitioners to satisfy tax under the Kerala Motor Vehicles Taxation Act, 1976 has lost its significance by virtue of the amendment made to the Motor Vehicles Act, 1988, as per Act 54 of 1994, particularly defining the terms "semi-trailer" and "trailer" under Sections 2(39) and 2(46) respectively (so as to absolve the petitioners from the liability) is the point sought to be projected. The contention raised by the petitioners is that the amendment is "clarificatory" in nature and hence, though it was introduced as per the Act 54 of 1994, w.e.f. 14-11-1994, it should be applicable right from the beginning and the petitioners are not liable to satisfy any tax in respect of the "chassis" as depicted in Ext. P-1. Both the petitioners are shipping and transporting agents, undertaking loading and unloading of cargo into and from the Vessels in the "wharf" area of Cochin Port, which is a Major Port, governed

by the provisions of the Major Port Trusts Act, 1963. According to the petitioners, the roads lying within the Port area are not "public roads" coming under the control of the State Government or the National Highways Department, as the case may be, and as such, a particular type of vehicle within the Port area for transporting the Containers/cargo are not liable to be taxed under the Kerala Motor Vehicles Taxation Act (hereinafter referred to as Act) mainly for the reason that it is not a mechanically propelled motor vehicle, but a particular type of carriage having no wheels in the front and have necessarily to be hooked on to the "prime mover" for being pulled on. It is also the case of the petitioners that the owner of the "prime mover" is somebody else, who has paid the tax based on the laden weight of the prime mover, taken together with the maximum weight of the trailers portion, attachable to the prime mover.

2. In connection with the Shipping Agency activities, the petitioner's company in O.P. No. 27396 of 2001 owned 105 chassis like those as given in Ext. P-1, which were being used strictly within the encroached premises of the Port Area to facilitate the movement of Cargo from one part of the Port Area to another. The above vehicles were imported in 1979 and pursuant to the steps taken by the Joint RTO, Mattancherry, they were got registered, assigning separate Registration numbers in the year 1986. But, subsequent to the registration, the Joint RTO, Mattancherry raised a demand for tax of the chassis for the period from 2-6-1979 onwards, under the Kerala Motor Vehicles Taxation Act, 1976. Since the Appeal and subsequent Revision preferred before the departmental authorities did not turn to be fruitful, it was challenged by filing O.P. No. 2365 of 1987 before this Court. A Division Bench of this Court set aside the demand notice and orders in appeal and revision, as per the judgment reported in United States Lines Agency v. State of Kerala and others 1988 (1) KLT 259 and directed the concerned authority to decide the primary question, whether the vehicle concerned will come within the definition of "motor vehicle" u/s 2(18) of the Motor Vehicles Act, 1939, before proceeding further.

3. Pursuant to the above verdict, the matter was reconsidered by the assessing authority, who held that Section 2(18) of the M.V. Act, 1939 was attracted to the case in hand and imposed the liability to pay tax, which was confirmed in Appeal as well as in Revision. This made the petitioner to approach this Court again, by filing OP. 3504 of 1992, which was heard along with the connected cases involving a similar dispute. As per the decision reported in M/s Chakiat Agencies Pvt. Ltd. v. State of Kerala 2001 (2) KLT 840; a Division Bench of this Court declined interference and the original petitions were dismissed, holding that trailers were also motor vehicles, adapted for use on the roads and hence taxable u/s 3 of the Motor Vehicles Taxation Act, 1976 and that the contention raised by the petitioners that "Port area" was not a "public place", was not correct or acceptable.

4. Being aggrieved of the verdict passed by the Division Bench, the matter was taken up before the Supreme Court by filing SLP No. 13316 of 2001, which was

dismissed at the admission stage itself, as borne by Ext. P-12 order, observing that the case was not a fit one to call for any interference. However, the petitioner was permitted to prefer a representation before the Joint RTO, observing that the payment of tax and registration would be subject to the decision on the representation.

5. After dismissal of the case filed before this Court vide the decision reported in 2001 (2) KLT 840 (cited supra), the Joint RTO issued Ext. P-6 demand notice demanding Rs. 2,15,35,500 for the period from 1-7-1986 to 30-11-1994 as tax arrears and pursuant to Ext. P-7 letter given by the petitioner (in O.P. No. 27396 of 2001), Ext. P-8 details were furnished as to the split up figures for the total demand raised. This was followed by Ext. P-10(a) and (b) notices issued under the Revenue Recovery Act. Meanwhile, based on the observation in Ext. P-12 order passed by the Apex Court dismissing the SLR the petitioner preferred a representation before the Joint RTO, which however was rejected as per Ext. P-15. This was challenged by filing Ext. P-16 Appeal, which was dismissed by the appellate authority as per Ext. P-17. On further challenge by filing Ext. P-18 Revision Petition before the Transport Commissioner, the same was also dismissed as per Ext. P-19. The petitioner is challenging all the impugned proceedings, such as Exts. P-6, P-10(a), P-10(b), P-15, P-17 and P-19 in the Original Petition (as amended).

6. The petitioner in O.P. No. 28929 of 2001 is stated as the owner of 80 similar "Semi Trailers", used in the wharf area of Cochin Port Trust, for transporting Cargo. These vehicles, as shown in Ext. P-1 were in fact imported by the predecessor-in-interest in the year 1976-77 and they were registered before the Joint RTO, Mattancherry in the year 1986. The Joint RTO, demanded arrears of motor vehicles tax for the period from January 1977 to 1986 and on challenging the same, the matter was remanded for fresh consideration by the departmental authorities. After re-considering the issue, the Joint RTO passed an order and demanded tax arrears to the tune of Rs. 1,58,79,035 for the period from 3-1-1977 to 30-6-1986. Meanwhile, "6" Semi Trailers were taken to Tuticorin and the balance "74" remained in Cochin. On serving the order, demanding the tax arrears, the predecessor-in-interest filed O.P. No. 215 of 1994, wherein interference was declined and the same was dismissed. Pursuant to dismissal of the said O.P, the petitioner satisfied a sum of Rs. 40 lakhs each on 3-7-2001 and 31-7-2001 and Rs. 78,79,035 on 16-8-2001 as evident from Exts. P-4 to P-6 respectively. There was no payment in respect of the subsequent period from 1-7-1986.

7. From 1-4-1990, the petitioner has been filing "G" Forms for exemption of tax for "non-use" u/s 5(i) of the Kerala Motor Vehicles Taxation Act, read with Rule 10 of the Kerala Motor Vehicles Taxation Rules. Since no lax payment was effected by the petitioner in respect of the subsequent period, demand/recovery notices were issued as per Exts. P-7 and P-7(a) for a sum of Rs. 1,98,42,710 for the period from 1-7-1986 to 30-11-1994 by way of Tax, Addl. Tax for the belated

payment and also Surcharge at the prescribed rates, which in turn is under challenge in this O.P. In compliance with the condition imposed while granting interim stay of all further steps under Exts. P-7/P-7 (a), a further sum of Rs. 40 lakhs is stated as deposited by the petitioner as ordered by this Court.

8. The concerned respondents have filed separate counter-affidavits in both the cases, seeking to sustain the impugned proceedings. It is contended that the liability to satisfy Tax in respect of the concerned vehicles like Ext. P-1, which are having no wheels in the front, but to be hooked on, to the "prime mover", has already been considered by a Division Bench of this Court and it has been held against the petitioners, as per the decision reported in 2001 (2) KLT 840 (cited supra). It is also stated that the subsequent change by way of amendment to MV Act, 1988, as per the Amendment Act, 1994, cannot be pressed into service by the petitioners, as the amendment is having effect "only from 14-11-1994" and hence the petitioners are liable to satisfy the tax from 1-7-1986 to 30-11-1994. It is pointed out that the term "Motor Vehicle"--for fixing the liability under the Kerala Motor Vehicles Taxation Act, by virtue of the stipulation u/s 2(m) of the said Act, has to be read and understood, as it is given in the Motor Vehicles Act, 1939 and any subsequent amendment to the Motor Vehicles Act cannot adversely affect the taxable event. In the counter-affidavit filed by the respondents in the O.P. No. 27396 of 2001, it is stated that, though the petitioners have stated that they had filed "G" Forms, it was also stated in such proceedings themselves that the vehicles were intended to be used only in the Port area and never on any "public road" and this being the position, the petitioners had no case that the vehicles were never put to use and further that the "adaptability to use" on public road was enough to attract the tax liability, as made clear by a Division Bench of this Court in 2001 (2) KLT 840 (cited supra). In the counter-affidavit filed by the respondents in O.P. No. 28929 of 2001, it is stated that though the petitioner had filed 74 G Forms in respect of the period from 1-4-1990, they were not in proper form and hence they were not considered.

9. Mr. S. Venkiteswaran, Sr. Counsel led the arguments on behalf of the petitioner in O.P. No. 28929 of 2001, while the arguments on behalf of the petitioner in O.P. No. 27396 of 2001 were made by Mr. Pathrose Mathai, learned Sr. Counsel. The Court was addressed on behalf of the respondents by Dr. Sebastian Chempapilly, the learned Spl. Government Pleader (Taxes).

10. It is pointed out by the learned Spl. Government Pleader appearing for the respondents, that the issue is squarely covered by the decision rendered by a Division Bench of this Court in one of the petitioners' case reported in 2001 (2) KLT 840 (cited supra) whereby the liability to satisfy tax in respect of the very same vehicles covered by Ext. P-1, u/s 3 of the Taxation Act, stands declared, which has become final by virtue of the dismissal of the SLP preferred by the petitioner as borne by Ext. P-12 produced in O.P. No. 27396 of 2001. Referring to the specific averments in the counter-affidavit, the relevant provisions of law and

also the judicial precedents cited across the Bar, it is submitted that the liability to satisfy tax u/s 3 of the Taxation Act is in respect of a "motor vehicle" as defined under the Motor Vehicles Act, 1939 which, in fact has been "incorporated by reference" as given in Section 2(m) of the Taxation of Act. This being the position, the subsequent amendment made in the Motor Vehicles Act, 1939 has no effect at all to the taxable event under the Motor Vehicles Taxation Act, 1976. The learned Sr. Counsel appearing for the petitioners however reiterated that, the decision rendered by the Division Bench in 2001 (2) KLT 840 (cited supra) is only in respect of the period prior to 1987 as observed in the opening paragraph of the judgment, which cannot be treated as a precedent in respect of the subsequent period; more so when the statute has undergone substantial change, particularly with regard to the terms "trailer", "semi trailer" etc. The crux of the contentions raised by the petitioners is that though there is not much difference between definition of the term "motor vehicle" u/s 2(18) of the M.V. Act, 1939 and u/s 2(28) of the M.V. Act, 1988, by virtue of the subsequent amendment effected, as per Amendment Act 54 of 1994, the terms "semi trailer" and "trailer" have been clearly defined in the new M.V. Act, whereby it has been made clear that "semi trailer" is one other than a "trailer". As such, it cannot be a "motor vehicle", as defined u/s 2(28) of the M.V. Act, 1988, though it is an inclusive definition, so as to include any "chassis" over which no body is built and also a "trailer".

11. True, there is a reference in paragraph 1 of the decision in 2001(3) KLT 840 (cited supra), as to the period "prior to 1987", i.e. with reference to the challenge made against the recovery/demand notices prior to the registration of Ext. P-1 vehicles, in view of the admitted fact that no demand or recovery had been initiated in respect of the subsequent period after registration. The crucial question considered by the Court was with reference to the specific pleadings raised by the petitioners, particularly as to the nature of Ext. P-1 vehicles, having wheels only at the rear, leaving the front to be hooked on to a "tractor" to be pulled on and also as to the plying of the vehicle exclusively within the "port/wharf premises" and not on any State road or NH. Referring to the various provisions of the M.V. Act, 1939 and also the Taxation Act and analysing the same in the light of the judicial precedents by the Apex Court and such other Courts, the Bench observed in paragraph "5", that the levy is within competence of the State Legislature under Entry 57 in List II of the 7th Schedule of the Constitution. The exact nature of the vehicles as covered by Ext. P-1 herein was noted in paragraphs "2" and "6", finally arriving at an inference in paragraph "6" that Ext. P-1 vehicle was a "motor vehicle" and then proceeded to consider whether it was exigible to tax in terms of Section 3 of the Taxation Act.

12. Referring to the law declared by the Apex Court in M/s. Central Coal Fields Ltd. and Others Vs. State of Orissa and others, and Union of India and others, Vs. Chowgule and Co. Pvt. Ltd., etc. etc., , the Bench observed that actual user was not necessary and what was material was whether the vehicle was "adapted for use" on the road. The observation of the Bench in paragraphs 11 and 13 is

relevant, which are extracted below:

11. Going by the position thus emerging, it is clear that the trailers are adapted for use on the roads. They are also motor vehicles coming within the definition of the 1939 Act. There is no case that they have been used on the roads in the State. They have plied exclusively within the area under the control of the Port Trust. But still they would be exigible to tax under S. 3 of the Taxation Act if they are found to be kept for use in the State. The case of the petitioners is that they were not kept for use in the State especially in view of the fact that they were never even got registered as motor vehicles under the Motor Vehicles Act and they were kept for use only for the purpose of carrying the containers from the ships to the go downs within the wharf in the area of the Port Trust. Normally, a motor vehicle which is not registered under the Motor Vehicles Act cannot be said to be kept for use in the State as a motor vehicle. This is the case of the petitioners as well. The order produced in O.P. 3504 of 1992 as Ext. P-5 issued by the Joint Regional Transport Officer also suggests that the trailers are used only within the wharf area of Cochin Port Trust and on the roads maintained by the Cochin Port Trust. But this does not indicate that the vehicles are not kept for use in the State.

"13. In *Bose Abraham v. State of Kerala* (2001 AIR SCW 466) the Supreme Court held that merely because a motor vehicle is put to a specific use such as being confined to an enclosed premises will not render the same to be a different kind of vehicle and it will be a motor vehicle as defined in the Act. No doubt Their Lordships were dealing with the Motor Vehicles Act, 1988 in relation to the Kerala Tax on Entry of Motor Vehicles in Local Areas Act, 1994. It is after referring to the various decisions including the one in *Bolani Ores Ltd.*, that Their Lordships came to the conclusion that excavators and road rollers are motor vehicles for the purpose of the Motor Vehicles Act. Of course in that case the fact that the vehicles were registered under the Motor Vehicles Act is also referred to. In our present case though for the period in question the vehicles were not registered under the Motor Vehicles Act, they were in fact got registered subsequently. It would therefore only mean that the vehicles were liable to be registered under the Motor Vehicles Act even when, as a matter of fact, the owners thereof did not get the vehicles registered. In this situation, we are of the view that merely because the trailers in question were generally kept in the area of the Port Trust and were used only for transport inside the Port area, would not enable the petitioners to contend that the vehicles are not exigible to tax under the Kerala Motor Vehicles Taxation Act. A motor vehicle adapted for use on the road and capable of being used on the road within the State, has to be held to be a motor vehicle kept for use in the State within the meaning of S. 3 of the Taxation Act. In that view, we hold that the vehicles in question are exigible to tax under the Taxation Act".

Going by the dictum, it is obvious that the reference made in the opening paragraph as to the relevant period of "being prior to 1987" does not have any

significance, but with respect to the quantum and demand involved. It is in no way connected with the nature of liability or the taxable event as well. It has been categorically held by the Bench that Ext. P-1 type vehicle is a "motor vehicle" under the relevant provisions of the Motor Vehicles Act, 1939 and it is exigible to tax u/s 3 of the Kerala Motor Vehicles Taxation Act. As such, the liability to pay tax in respect of the selfsame vehicle during the period of subsistence of the Old Act, cannot be challenged by the petitioners under any circumstance; more so when the legal issue decided has become final on dismissal of the SLP by the Apex Court. The only question is whether any change in circumstance has been resulted, by virtue of the new M.V. Act, i.e. Motor Vehicles Act, 1988, which has been brought into force w.e.f. 1-7-1989.

13. The term "motor vehicle" u/s 2(18) of the "Old Act" (Motor Vehicles Act, 1939) reads as follows:

S.2(18) "motor vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises.

There is not much difference with regard to the meaning of the term, when it comes to Section 2(28) of the "New Act" (M.V. Act, 1988), which is extracted below:

S.2(28). "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding thirty five cubic centimetres.

But coming to the definition of the term "trailer" u/s 2(32) of the Old Act, it reads as follows:

(32) "trailer" means any vehicle other than a side-car drawn or intended to be drawn by a motor vehicle.

In the New M.V. Act, 1988, the term "trailer" underwent a change as given u/s 2(46), which reads as follows:

(46) "trailer" means any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle.

The particular type of vehicle as given in Ext. P-1 happens to be a "semi-trailer" as defined u/s 2(39) of the M.V. Act, 1988, which reads as follows:

(39) "semi-trailer" means trailer drawn by a motor vehicle and so constructed

that a part of it is super-imposed on, and a part of its weight is borne by, the drawing vehicle.

Going by the above definitions, it is clear that, when the term "trailer" defines it as any vehicle other than a semi-trailer [Section 2(46)], the definition of the term "semi trailer" u/s 2(39) says that "semi-trailer" means a trailer drawn by a motor vehicle and so constructed that a part of it is superimposed on, and a part of its weight is borne by, the drawing vehicle. As such, there is apparent conflict between the above two definitions.

14. The discrepancy, as above and several other vital aspects came to the notice of the law makers, when substantial amendments were introduced to the M.V. Act, 1988, as per Act 54 of 1994 w.e.f. 14-11-1994, whereby the term "Semi trailer" u/s 2(39) was also amended, which stands now as given below:

(39) "semi-trailer" means a vehicle not mechanically propelled (other than a trailer) which is intended to be connected to a motor vehicle and which is so constructed that a portion of it is super-imposed on, and a part of whose weight is borne by, that motor vehicle.

Thus, as it stands now, the term "semi-trailer" means a vehicle not mechanically propelled (other than a trailer) and the term "trailer" u/s 2(46) defines it as any vehicle other than a "semi-trailer". The net result is that the term "motor vehicle" as defined u/s 2(28) of the M.V. Act, 1988 though includes a "trailer", it does not any more include "semi-trailer" and hence there cannot be any tax under the Taxation Act in respect of such vehicles. The case of the petitioners is that the amendment to the term "semi-trailer" u/s 2(39) is "clarificatory" in nature and as such, it has to be deemed as having incorporated into the parent Act itself, right from the beginning. Reliance is sought to be placed on the decision rendered by the Supreme Court in *Shyam Sunder and Another Vs. Ram Kumar and Another*, .

15. As mentioned herein before, the liability to pay tax in respect of Ext. P-1 type of vehicles under the Old Act, i.e., M.V. Act, 1939 stands concluded as per the Division Bench decision of this Court reported in 2001(2) KLT 840 (cited supra) and dismissal of the SLP as per Ext. P-12. The term "motor vehicle" also remained to be the same even after the New Act was brought into force and there is not much difference between Section 2(18) of the Old Act and Section 2(28) of the New Act in this regard. Section 2(m) of the Taxation Act is relevant to decide the actual question involved, which reads as follows:

(m) Words and expressions used but not defined in this Act shall have the meaning respectively assigned to them in the Motor Vehicles Act, 1939 (Central Act 4 of 1939) or the Rules made there under.

Since there is no difference between the meaning of the term "motor vehicle" under the Old Act and New Act, i.e. under Sections 2(18) and 2(28) respectively, the law declared by the Bench in 2001 (2) KLT 840 (cited supra) with regard to

the taxable event cannot have any change in this regard, at least till the relevant provisions were also suitably amended as per Act 54 of 1994.

16. The conflict in the definition between the terms "trailer" u/s 2(46) and "semi-trailer" u/s 2(39) was rectified and the term "semi-trailer" u/s 2(39) was amended suitably as per Act 54 of 1994, which was brought into effect only from 14-11-1994. Obviously, the said amendment does not have any retrospective effect at all. What made the law making authorities to have the said provisions amended, is having little or nil significance, from the point of view of taxation, which is governed by an enactment by the State and the State is very much at liberty to tax any type of vehicle, by virtue of the charging provision u/s 3 of the Taxation Act. It was also open for the State to have defined the term "motor vehicle" separately. Section 2(m) of the Taxation Act, is significant to the extent that it does not contain the words "or as amended from time to time", after the reference made to M.V. Act, 1939 or the Rules made there under. When the Taxation Act is specific, referring to the definition of the words and expressions, which are not defined in the said Act, to have the meaning respectively assigned to them in the M.V. Act, 1939 or the Rules made there under, it is quite categoric that the State Act is not susceptible to any subsequent modification/change or amendment to such terms as originally given in the M.V. Act, 1939. For that matter, even the repeal of the M.V. Act, 1939 or subsequent legislation cannot have any adverse impact on the taxable event and the charging provision is to remain intact. This Court finds that there is considerable force in the submissions made by the Spl. Government Pleader (Taxes) on behalf of the respondents, in this regard.

17. Coming to the precedents, it has been held by the Apex Court in Ram Sarup Vs. Munshi and Others, that, where the provisions of an Act are incorporated by reference in a later Act, the repeal of the earlier Act has in general no effect upon the construction or effect of the Act in which its provisions have been incorporated. In Narottamdas Vs. State of Madhya Pradesh, , the point considered was with regard to the adoption of the expression defined in another Act. As per Section 2 of the Madhya Pradesh Minimum Wages Fixation Act, 1962, the words and expressions used in the said Act shall have the same meaning for the purpose of the said Act, as defined in the Minimum Wages Act, 1948. The Apex Court held that the definition would remain effective even after the other Act, with reference to which the definition was given, ceased to exist.

18. Somewhat similar observation has been made by this Court as well, in the decision reported in Quilon District Petroleum Dealers' Association Vs. State of Kerala, holding that the deletion or repeal of the earlier Act cannot result in any modification of the Act, into which the earlier Act had been incorporated by reference. The position has been made clear by the Apex Court in a recent decision in Girnar Traders Vs. State of Maharashtra and Others, that, in a case of legislation by incorporation, the subsequent amendment or repeal of the provisions of an earlier Act adopted cannot be deemed to have been incorporated

in the adopting Act.

19. "Incorporation by reference" can be seen in various other enactments as well, such as the Kerala Motor Transport Workers' Welfare Fund Act, 1985 (Kerala), the Kerala Tax on Entry of Goods into Local Areas Act, etc. In the case of the Kerala Motor Vehicles Taxation Act, 1976, no distinction is drawn between the levy of tax on "trailer" and "semi-trailer" and both attract the tax under items 4, 9 and 10 of the Schedule to the Act. It is provided in the first proviso to the Schedule to the Act that in the case of the "trailer" coming under items 4, 9 and 10 of the Schedule, when used alternatively, one at a time, with goods vehicles, tractors or articulated vehicles, as the case may be, the tax is levied only on the trailers which have highest load carrying capacity. Here, it is to be noted that the petitioners are owners of "semi-trailers" and they do not own the prime movers to which the semi-trailers are attached and the prime movers belong to somebody else. By virtue of the specific finding arrived at by the Division Bench in 2001 (2) KLT 840 rendered under the old Act (M.V. Act, 1939), the very same vehicles covered by Ext. P-1 are exigible to tax u/s 3 of the Taxation Act. The amendment of the term "semi-trailer" u/s 2(39) of the M.V. Act, 1988, as per the amendment Act 54 of 1994 w.e.f. 14-11-1994, cannot advance or promote the case of the petitioners in any manner. The registration of the "semi-trailer" as an attachment to a prime mover and grant of some registration number to it is consistent with Rule 77 of the Central Motor Vehicles Rules, 1989 and admittedly since the prime mover belongs to somebody else, the petitioners cannot escape from the liability as to the payment of tax in respect of "semi-trailers" owned by them under the Kerala Motor Vehicles Taxation Act.

20. In Quilon District Petroleum Dealers' Association Vs. State of Kerala, , a learned Judge of this Court had to consider whether any deletion or repeal of the earlier Act would result in any modification of the Act into which the earlier Act had been incorporated by reference. The contention raised by the petitioners in the said case was that, the tanker lorries belonging to the petitioners/Petroleum dealers for lifting the petroleum products from the installations of the petroleum companies to the retail outlets were not "transporting undertakings" for the purpose of the Kerala Motor Transport Workers' Welfare Fund Act, 1985 or the Welfare Fund Scheme there under. The term "motor transport undertaking" was defined u/s 2(h) of the Kerala Motor Transport Workers Payment of Fair Wages Act, 1971, which means a motor transport undertaking including a private carrier engaged in carrying passengers or goods or both, by road for hire or reward. The term "private carrier" is not defined in the Welfare Fund Act. But under clause (1) of Section 2 of the said Act, it is provided that, all other words and expressions used but not defined in the said Act and defined in the Motor Vehicles Act, 1939 shall have the meanings respectively assigned to them in that Act. M.V Act, 1939 defines the term "private carrier" and it was accordingly, that the liability was being fixed upon the petitioners therein. The contention taken by the petitioners was that, since M.V. Act, 1939 had already been repealed, as

clearly stated in Section 217(1) of the M.V. Act, 1988, no more reliance could have been placed upon the definition of the term "private carrier" as given in Section 2(22) of the M.V. Act, 1939, so as to mulct the liability upon the petitioners under the Welfare Fund Act.

21. After hearing both the sides and also taking note of the dictum laid down by the Apex Court in *Narottamdas Vs. State of Madhya Pradesh*, *Bolani Ores Ltd.*, and AIR 1931 149 (Privy Council), the learned Judge observed that "no deletion or repeal of the earlier Act results in any modification of the Act into which the earlier Act had been "incorporated by reference" and as such, the repeal of the M.V. Act, 1939 left the Welfare Fund Act wholly untouched. This Court is in full agreement with the finding therein.

22. In the above circumstances, this Court finds that the plea raised by the petitioners with reference to the change in the definition of the terms "trailer" and "semi-trailer" u/s 2 (46) and 2(39) respectively of the New M.V. Act cannot tilt the balance in any manner in favour of the petitioners, to wriggle out of the liability of taxation, which stands already confirmed by a Division Bench of this Court with reference to the provisions under the "Old M.V. Act" and Taxation Act. In any view of the matter, the admitted demand is only in respect of the period from 1-7-1986 to 30-11-1994 and the respondents have no case that they are entitled to collect the tax in respect of the subsequent period, after 30-11-1994 (Act 54 of 1994 having come into effect from 14-11-1994 and State having virtually accepted the change in definition, in the M.V. Act to construe the liability under the Taxation Act). As such, the only question is whether the respondents are justified in having raised the demand for the subsequent period from 1-7-1986 to 30-11-1994 i.e. after the period dealt with in 2001 (2) KLT 840 (cited supra), which cannot but be answered in the positive.

23. There is a case for the petitioners that the demand is barred by "limitation" as well. But this plea is obviously wrong and misconceived, as the tax payable to the State under the Kerala Motor Vehicles Taxation Act is part of the public revenue and the prescribed period of limitation is 30 years" by virtue of the mandate under Article 112 of the Limitation Act.

24. It is contended by the petitioner in W.R(C) No. 28929 of 2001 that they had submitted "G" Forms in respect of "74" vehicles in their hands (after removing "6" vehicles to Tuticorin) for the period from 1-4-1990 onwards. But it has been categorically asserted in the counter-affidavit filed by the first respondent that the said "G" Forms were not in the prescribed format and were not liable to be acted upon and hence not considered. No challenge whatsoever was raised by the petitioner at any point of time before filing the above Original Petition by approaching the statutory authorities or by such other course in this regard.

25. Reliance is sought to be placed on the decision rendered by the Apex Court in *Shyam Sunder and Another Vs. Ram Kumar and Another*, by the petitioners, in support of their contention that the amendment brought to the definition of the

terms "trailer" and "semi-trailer", as per amendment to the M.V. Act in 1994 has to be considered as "clarificatory" and hence to be deemed as having incorporated retrospectively. This Court finds that the said decision, rendered with reference to the relevant provisions of the Punjab Pre-emption Act, 1913, dealing with the right of pre-emption in respect of sale of agricultural land to vest in tenant of vendor, stands entirely on a different footing and deals with a different context. The very same decision says that enactment of an amending Act dealing with a substantive right can only be "prospective" and it does not affect the substantive or vested rights of parties, unless it is made retrospective either expressly or by necessary implication, unlike an amending Act affecting the procedural aspects, where it could be retrospective unless the Act provides otherwise. It has been made clear that there is no such rule of construction that, beneficial legislation is always retrospective in operation; simultaneously holding that declaratory or clarificatory provision is retrospective in operation, as its function is to supply an omission in or explain a previously existing statute, which is to be deemed as having come into effect when the previous enactment was passed. Coming to the case in hand, it is to be noted that there were apparent conflicts between the definition of the terms "trailer" and "semi-trailer" as given under Sections 2(46) and 2(39) respectively and the stalemate was removed only by appropriate amendment as per the Amendment Act 54 of 1994, brought into force w.e.f. 14-11-1994, which is not a procedural or declaratory or clarificatory amendment, but a conscious exercise to have deleted something in one provision and adding something more into the other provision. This is "substantive" in character and since the provision has not been made of any retrospective effect, either expressly or by necessary implications, the contention raised by the petitioners in this regard has necessarily to fail. Even otherwise, as observed by this Court in the previous paragraphs, the liability in the instant case is under the Taxation Act, wherein reference is made to the words/terms as used in the M.V. Act, 1939, which are not separately defined in the Taxing statute. That apart, in view of the settled law, laid down by the Apex Court in *Girnar Traders v. State of Maharashtra*(9) and such other cases referred to earlier, the amendment, modification, deletion or repeal of an earlier statute, "incorporated by reference" in the later enactments, cannot result in any change to the incorporating statute. As such, this Court does not find any merit in the said submission.

In the above facts and circumstances, this Court finds that the petitioners have not succeeded in establishing their cases so as to get rid of the liability, to satisfy the tax for the period from 1-7-1986 to 30-11-1994, for which the demand has been raised by the respondents. The Original Petitions are devoid of any merit and they are dismissed accordingly